process. See id. at 46-47; Varner Aff. ¶ 67.

Requiring CLECs to combine network elements at a collocation site is not a reasonable and nondiscriminatory alternative to providing CLECs with supervised access to BellSouth's network in order to combine elements efficiently. As the Department of Justice has noted, collocation is generally far more costly than supervised access to BellSouth's network, and it is unnecessary as well. See DOJ SC Eval. 22. It simply makes no sense for BellSouth to disconnect an unbundled loop from the main distribution frame, disconnect the unbundled switch port from the same frame, run wires from both elements into a CLEC collocation cage, and require the CLEC to reconnect the unbundled loop and unbundled switching elements at the collocation. See DOJ SC Eval. 22 n.32. The purpose of such an exercise can only be to drive up CLEC costs, degrade CLEC quality and reliability, and delay the development of competition. That is why the Department of Justice disapproved the requirement of collocation in its South Carolina Evaluation. Not only does BellSouth's instant application fail to address the Department's concerns, BellSouth now goes farther by claiming that collocation is the only means by which CLECs may gain access to its network for the purpose of combining network elements. See BST Br. 48-50. BellSouth's strategy is to have its cake and eat it, too: to refuse to provide existing combinations of network elements, then to deny CLECs all but the most unreasonable and discriminatory means of combining network elements for themselves.

BellSouth's argument that collocation is the only statutorily authorized means of CLEC entry into its premises cannot be supported. BellSouth cites section 251(c)(6) of the Act, but that section deals with ILECs' duty to provide collocation for purposes of interconnection and access to unbundled network elements. Section 251(c)(6) does not purport to state that collocation is the only method available to CLECs for obtaining access to BellSouth's unbundled elements. Moreover, MCI is not required to provide its own elements when it obtains unbundled elements from a BOC; the Eighth

Circuit decision explicitly held that CLECs can provide a finished service using only the ILEC's elements. Iowa Util. Bd., 120 F.3d at 814-15.

Aside from the unreasonableness of requiring collocation, BellSouth's refusal to provide elements in presently existing combinations provides an independent basis for this Commission to reject its application notwithstanding the Eighth Circuit's recent rehearing decision. Section 271 imposes on the Commission an independent obligation to find that an applicant has satisfied each checklist item, and critical checklist items -- access to local loops, access to unbundled local switching, access to local transport, nondiscriminatory access to databases -- do not incorporate the different requirements of sections 251 and 252 that were the subject of the Eighth Circuit decision. It is well within the Commission's authority under section 271 to rule, for example, that a BOC that disconnects the network interface device ("NID") in responding to a request for "[l]ocal loop transmission from the central office to the customer's premises" (section 271(c)(2)(B)(iv)) has not satisfied checklist item (iv).

In any event, numerous other regulations that were upheld by the Eighth Circuit are violated by BellSouth's practices. E.g., 47 C.F.R. § 51.313(b) (requiring ILECs to provide access to unbundled elements on the same "terms and conditions" that they enjoy themselves); 47 C.F.R. § 51.309(a) (forbidding ILECs from imposing "limitations, restrictions or requirements" on the use of unbundled elements); § 51.307(b) (forbidding ILECs from denying CLECs two or more elements that are connected to each other). Moreover, this Commission has a duty to determine the meaning of the requirement in section 271(c)(2)(B)(ii) that ILECs provide "[n]ondiscriminatory access to network elements in accordance with the requirements of section[] 251(c)(3)."[31] Allowing BellSouth to take

[31] This is not a situation in which the Commission necessarily is required to acquiesce in the Eighth Circuit's interpretation of section 251(c)(3). For reasons discussed above, however, the Commission need not reach this issue.

apart presently combined elements is self-evidently discriminatory, for BellSouth would be able to use the existing combined elements without the increased costs, delay, and service outages to their customers from disassembling and recombining them. The sole purpose and effect of such conduct would be to impose on new entrants wholly unnecessary costs, quality degradation, and delays that BellSouth does not incur. Unless BellSouth provides CLECs with the access to unbundled elements on the same terms and conditions as BellSouth faces, it cannot meet section 271(c)(2)(B)(ii)'s requirement of "[n]ondiscriminatory access."

Finally, BellSouth leaves open the possibility that it will stop providing network elements it currently offers on the grounds that they are in fact combinations. For example, BellSouth's claimed right to disassemble existing network elements would permit it to refuse to provide unbundled loops because the loops are in fact combinations of several network elements, including feeder and distribution. BellSouth makes no commitment in its interconnection agreements or its SGAT to continue to provide unbundled loops as unbundled loops, no commitment to provide access to its network sufficient to permit CLECs to combine the elements that BellSouth claims makes up loops, and no commitment to combine the elements itself at cost-based rates. At a minimum, BellSouth's failure to address these issues in any concrete, specific, enforceable way is a failure to demonstrate compliance with the terms of the Act and requires denial of BellSouth's application.

BellSouth's refusal to provide combinations of network elements as they exist in its network is having a devastating effect on MCI's plans to compete on a facilities basis. Providing service through combinations of elements is the most effective means of facilities-based competition for residential customers, but the efficiency of competing using combinations is destroyed when BellSouth breaks apart the network elements before they are provided to MCI. Supp. Henry Decl. ¶¶ 6-7.

C. BellSouth Has Not Even Offered Performance Standards Necessary to Ensure Provision of Service to CLECs on Reasonable, Nondiscriminatory Terms.

In recognition of the fact that CLECs are entirely dependent on monopoly providers for interconnection, resale, and unbundled elements, Congress required that BOCs provide access to all three means of entry on reasonable and nondiscriminatory terms. See, e.g., 47 U.S.C. §§ 251(b)(1), 251(c)(2), 251(c)(3), 251(c)(4); 271(c)(2)(B)(i), (ii), (xiv). These guarantees are hollow without objective proof and standards to demonstrate that the quality and timeliness of service BOCs provide to their captive CLEC customers are both reasonable and equal to the quality and timeliness of service the BOCs provide to themselves (including their customers and affiliates). Vague promises of reasonable and nondiscriminatory service without specific, objective, enforceable standards are as useless as a contract that calls for "reasonable" prices without disclosing any particular prices.

It is critical to distinguish at the outset between an obligation to file reports based on various performance measures (e.g., reporting the length of time to provision a loop), and an obligation to abide by performance standards, which actually require service to be provided at a specified level (*e.g.*, 95% of loops must be provided within X hours of service order receipt; all FOCs must be received within four hours; Y% of service restorals must be completed within two hours if no dispatch is required). Absent performance standards, CLECs will not know the quality and timeliness of service they can expect to receive from the BOCs in order, among other things, to advise CLECs' potential and actual customers what service they can expect from the CLEC. Performance standards allow CLECs and regulators to hold the BOCs to an adequate, nondiscriminatory level of performance.

The Commission has recognized that "proper performance measures with which to compare BOC retail and wholesale performance, and to measure exclusively wholesale performance, are a necessary prerequisite to demonstrating compliance with the Commission's 'nondiscrimination' and 'meaningful opportunity to compete standards.'" Mich. Order ¶ 204 (citing DOJ Mich. Eval. 3). In the Michigan Order, the Commission emphasized the findings of the Department of Justice and the Michigan PSC that detailed performance measures and standards, including disaggregated data and "precise clarity" in definitions, are necessary to prevent BOCs from backsliding after they are granted interLATA authority, and to permit a determination of whether the BOC has complied with the Commission's non-discrimination rules. Mich. Order ¶¶ 205-06, 209; see also FPSC Order 177 ("performance standards and measurements are the avenue by which the existence of nondiscrimination or parity will be established and monitored"). These performance measures and benchmarks are not limited to electronic OSS connections, but must cover a wider array of wholesale support functions needed for local service. Mich. Order ¶¶ 205-06; DOJ SC Eval., Affidavit of Michael J. Friduss, passim (ex. N hereto). However, consistent with its approach of challenging or ignoring critical aspects of the Act, BellSouth contends that the Commission had no authority to require the performance measurements outlined in the Michigan decision.[32]

1. BellSouth Offers No Performance Standards With Enforcement Mechanisms.

BellSouth does not offer in any document -- an SGAT, interconnection agreement or paper promise in an affidavit -- performance standards with enforcement mechanisms. Performance reporting alone is ineffective to guarantee service on reasonable, nondiscriminatory terms. Even if BellSouth accurately reported in sufficient detail all aspects of service provided to CLECs, the sole result would be paper reports. Performance reporting alone is inadequate without (1) established standards against which to judge performance to CLECs (individually and as a group); (2) data as to

[32] See Petition of BellSouth for Reconsideration and Clarification, In re: Application of Ameritech Michigan Pursuant to Section 271 of the Telecomm. Act of 1996 to Provide In-Region, InterLATA Services in Michigan (CC Docket No. 97-137) (Sept. 18, 1997), at 4-6.

how frequently BellSouth meets specified intervals or benchmarks for its own customers or affiliates; and (3) self-executing remedies for failure to meet these standards.

Reporting alone might show, for example, that BellSouth provides loops to MCI in an average of ten days even if it offers a "target" of two days. At that point, MCI might file a lawsuit, or a complaint with the LPSC. Months or years later, the complaint would be decided. From BellSouth's perspective, the possibility of an uncertain monetary penalty months or years after MCI has lost customers and/or its good reputation will be a small cost of doing business. As BellSouth is acutely aware, only performance standards backed up by substantial, self-executing remedies have any prospect of deterring BOCs from providing poor service to their CLEC dependents. The Commission has already stated its firm agreement with the principle that "without enforcement mechanisms, reporting requirements are 'meaningless.'" BA/NYNEX Order ¶ 208 (emphasis added; citing ex parte submission of TCG Corp.). Yet nowhere in BellSouth's testimony, interconnection agreements, or SGAT does BellSouth even commit to the principle of performance standards with enforcement mechanisms.

The Stacy affidavit offers "statistical process control" ("SPC") reports, but they are just that -- reports of whether certain specified functions are provided within a wide range of levels. For example, BellSouth offers to report the percentage of provisioning troubles with residential resale orders, dispatch required, within the first 30 days of the order. The range of acceptable performance BellSouth offers is a staggering 20% to 90% (BST App. A, Tab 13, Ex. WNS-9, p.21); i.e., no action would be taken if CLECs experience troubles with 90% of their orders, while BellSouth experiences troubles with only 20% of its own orders. As the Florida PSC found, BellSouth's SPC approach is not adequate to demonstrate nondiscrimination and parity. FPSC Order 183. BellSouth's SPC reports do not tie BellSouth to a fixed standard of service or require any self-executing remedies for failure to meet a particular standard.

BellSouth is fully aware of the difference between SPC reports and actual standards, because in one or two instances it has actually agreed to a standard. Thus, in its AT&T agreement, BellSouth agrees that 99.9% of all LIDB queries will receive responses within two seconds, and that there must be at least a 99.9% reply rate to all query attempts. (BST Ex. WNS-2, p.9). Although there are no self-executing remedies to encourage compliance with this standard, it is at least a standard. There is no reason why BellSouth should agree to a standard for LIDB, while nearly every other critical aspect of local service, including pre-ordering, provisioning, maintenance, billing accuracy, etc., is left effectively uncontrolled.

Similarly, BellSouth offers only "interim targets" for critical functions such as the provision of unbundled elements. Stacy II Aff. ¶¶ 27-28. Non-binding targets are a far cry from a commitment to specific performance standards in a legally binding document before interLATA authority is granted. BellSouth has simply refused to commit to performance standards needed to establish parity. BellSouth is willing to discuss targets, but not to hold itself to any level of performance. Moreover, even where BellSouth has proposed target intervals, such as in its agreement with AT&T stating a target of providing between 4-15 business lines in 4 days or less, BellSouth does not commit to how often it must meet that interval, or what the redress will be for noncompliance, let alone state how often it meets the target for itself or its affiliates. Targets do not prevent BellSouth from providing inferior service to CLECs, and/or degrading the level of service to CLECs after it receives interLATA authority. See FPSC Order 182 (target intervals are inadequate and have a greater potential for masking discrimination).

Remarkably, the only redress BellSouth even offers as part of its control limit proposal is that if performance falls outside the wide control limits for three consecutive months, it will conduct "an investigation or a study" of the cause. Stacy II Aff. ¶ 23. To do more, it insists, would mean "overreacting" to service deficiencies. Id. In short, CLECs can rest assured that if they lose customers and suffer damage to their reputation because of inferior, discriminatory service at the behest of BellSouth for at least three months, BellSouth will not overreact; it will investigate the problem. Because of its refusal to commit to any binding service levels with effective enforcement mechanisms, BellSouth plainly has not offered, let alone provided, access to resale, interconnection, and unbundled elements on reasonable, nondiscriminatory terms.

2. The Reporting BellSouth Offers is Inadequate.

In addition to the fact that BellSouth fails to offer performance standards with self-executing remedies, the reporting it offers to provide in its testimony and interconnection agreements is wholly inadequate even to produce the underlying data to determine whether it has met its obligation to provide interconnection, resale, and unbundled elements, including OSS, on reasonable, nondiscriminatory terms.[33] As the Department concluded, BellSouth's proposed performance reports for South Carolina -- virtually identical to what BellSouth offers in this filing -- are "deficient" and "preclude 'a determination of parity or adequacy in the provision of resale or UNE products and services to CLEC's . . .'" DOJ SC Eval. A-31 (quoting Friduss SC Aff. ¶ 78).

It is important to emphasize as a threshold matter that even if BellSouth included a full range of performance reporting scattered through several interconnection agreements, it would not comply with the Act because BellSouth refuses to commit in a legally binding document to provide any report from

[33] MCI addresses in part II.A. above the lack of parity and inadequate OSS evident from the performance data BellSouth submitted with its application. This section does not address the data, but instead addresses some of the deficiencies in the *types* of performance reports BellSouth offers to prepare in the future.

any agreement to any CLEC.[34] For example, the fact that BellSouth may have agreed to a particular performance report in its interconnection agreement with Time Warner provides absolutely no protection to MCI because BellSouth will not allow MCI automatically to include selected reports or measurements from other BellSouth agreements in MCI's own interconnection agreement. See, e.g., Stacy SC Reply Aff. ¶ 12 (ex. Q hereto) (FOC and reject reports are not generally available but will be provided to selected CLECs). The practical impact of this position is severe: if, for example, BellSouth's agreement with Time Warner contains useful reporting requirements for pre-ordering, and its agreement with AT&T contains useful requirements for maintenance and repair, BellSouth will not allow MCI to obtain the best of each agreement, at least without undergoing unnecessary negotiation for measures BellSouth has already agreed to with other carriers. As long as BellSouth refuses to commit to making individual terms of an agreement available to all CLECs on a nondiscriminatory basis, it cannot rely on performance requirements in individual agreements to demonstrate a legally enforceable obligation to provide adequate performance reports to all carriers. Instead, BellSouth must commit to a full range of reports in a legally binding commitment available to all carriers.

BellSouth's proposed "permanent" reporting measures do not solve this problem (even if they did include a full range of performance reports). The "permanent" reporting BellSouth proposes is not contained in binding interconnection agreements, but is simply promised in BellSouth's brief.[35] CLECs should not have to endure lengthy and expensive litigation to enforce these commitments after

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[34] The Louisiana PSC has recognized that its existing regulations do not cover performance measurements. Transcript of LPSC Open Session (Oct. 22, 1997), at 44-45.

[35] Similarly, BellSouth simply promises a "target date" of the end of March, 1998, for CLECs to have access to performance data in BellSouth's data warehouse. Stacy II Aff. ¶ 15. No binding commitment is made as to when CLECs will have such access, let alone a commitment as to precisely what data CLECs will be able to obtain. And there is of course no evidence that the access targeted for next year will work as advertised.

BellSouth gains in-region authority and BellSouth claims they are not legally enforceable, or unilaterally changes its reporting. In a regime in which individual contract terms are not available to all carriers, the Commission must interpret the requirement that all checklist items be provided pursuant to an interconnection agreement to require a full range of performance reporting in legally binding interconnection agreements for all carriers.

More importantly, BellSouth's proposed measurements are woefully inadequate to ensure parity and service on reasonable terms. The Department thoroughly analyzed BellSouth's proposed "permanent" measurements -- the only measurements BellSouth has promised to provide to all carriers on an ongoing basis -- as part of the Department's South Carolina Evaluation, and concluded that "BellSouth's proposed permanent performance measurements fall considerably short of what is needed." DOJ SC Eval. A-33 (ex. N hereto). That analysis need not be repeated here. MCI simply notes some of the examples of the inadequacies with the permanent reports BellSouth claims it will provide in the future:

Pre-ordering functions. The Commission has recognized the importance of measuring pre-ordering functions. Mich. Order ¶ 140; see also DOJ SC Eval., Affidavit of Michael J. Friduss, ¶ 53, 77. CLECs must have a reliable means of obtaining information on desired features and their availability, service delivery intervals, telephone number assignment, and street address availability, while the potential customer is on the line. Without timely and accurate pre-ordering information, CLECs cannot come close to matching the service that BellSouth provides to potential customers during the pre-ordering stage. CLEC service representatives must be perceived as equally competent, knowledgeable and timely as their BOC counterparts, particularly because the pre-ordering experience is often the only direct, personal contact a customer will have with MCI other than receiving a bill. Equally important, inaccurate pre-ordering information results in rejected orders. Indeed, BellSouth admitted on cross-examination in the South Carolina state proceeding that performance measurements on pre-ordering and ordering are "essential to determining that we're providing those services at parity." Stacy Testimony, BST SC App. C, Vol. 4, at p.83 (ex. R hereto). Yet BellSouth offers almost no performance measures for pre-ordering.

Network Performance. BellSouth does not measure critical aspects of network performance. Indeed, BellSouth conceded on cross-examination in the South Carolina proceeding that "[w]e have not agreed on good measures of network performance yet." Stacy Testimony, BST SC App. C, Vol. 4, at p.83.

Firm Order Confirmations and Reject Notification. Although the Commission emphasized the importance of reporting the timeliness of FOCs, Mich. Order ¶ 187, BellSouth conceded in its South Carolina application that it is not yet capable of reporting this information, and cannot even provide reports on order rejects and error notices. Stacy II SC Aff. ¶ 43. Moreover, BellSouth refuses to provide reports of FOC and reject intervals in the future for all CLECs. It will only provide such reports selectively based on individual interconnection agreements. Stacy SC Reply Aff. ¶ 12. BellSouth includes in some of its interconnection agreements a measurement for timeliness of rejects and FOCs but cleverly excludes any measurement of the rejects and FOCs that are likely to take the longest time to return. BellSouth measures only the few rejects that "occur up front" (the few rejects BellSouth processes in an automated fashion), and only those FOCs for orders that flow through without any human intervention. Stacy II Aff. ex. WNS-3, p.2. These measurements therefore exclude the vast majority of rejects -- the rejects that are returned after manual processing -- and exclude FOCs on orders that fall out for manual processing.

Operator Service and Directory Assistance Responsiveness. In order to ensure that ILECs do not enjoy an unfair competitive advantage, it is important to measure how quickly the BOC provides operator and directory assistance services both to its customers and to CLEC customers. Friduss Aff. ¶ 66-67. BellSouth refuses to do so. Stacy SC Reply Aff. ¶ 16.

Held Orders. It is critical to determine how many non-completed orders are being held, and for how long, since customers expect orders to be completed on time. The quantity of held orders, and length of time held, for CLEC orders must be compared to the BOC's performance as to internal orders for its own customers. Friduss Aff. ¶ 58; Mich. Order ¶ 212. BellSouth refuses to do so. Stacy SC Reply Aff. ¶ 16.

In addition to the glaring absence of these critical performance measures, even the functions BellSouth has promised to measure will not be measured in sufficient detail to provide the data needed to determine parity and the provision of service on reasonable terms. For example, it is impossible to determine if BellSouth is discriminating against CLECs if it lumps together multiple types of services in a single report. Reports must disaggregate the type of service, such as: resold residence POTS; resold business POTS; resold residence ISDN; resold Business ISDN; resold Centrex/Centrex-like; resold PBX trunks; unbundled DS0 Loop; unbundled DS1 Loop; other unbundled loops; unbundled switch; and other UNEs. These service types, as well as formulas for performance measurements and service quality levels, are included in a set of Service Quality Measurements prepared by the Local Competition Users Group ("LCUG"), of which MCI is a member, and in a set of additional measurements prepared by MCI. The Florida PSC has recognized the importance of establishing performance benchmarks that "address all of the functions listed in the LCUG" document. FPSC Order 185. The LCUG and MCI recommendations are attached hereto as ex. K. The importance of sufficiently detailed reporting is emphasized in the Commission's Mich. Order, ¶ 212.

Similarly, there are multiple types of orders. A report that states that "orders" are provisioned in an average of X hours or days is meaningless without specifying the type of order. For example, a feature change should be completed in a matter of hours, whereas installation of dedicated DS1 transport may take 2-3 days. At a minimum, the following order types should be separately reported: new service installations; service migrations without changes; service migrations with changes; local number porting; move and changes activities; feature changes; and service disconnects. The level of disaggregation and detail required in order to obtain meaningful reports is also described in the LCUG and MCI recommendations (ex. K hereto).[36]

In sum, BellSouth's interconnection agreements and proposed "permanent measurements" do not come close to offering to report the necessary detail described in the Michigan Order, Department of Justice testimony, or the LCUG and MCI recommendations, and thus do not come close to satisfying the checklist requirements for which performance data are needed -- checklist items (i) (interconnection), (ii) (unbundled elements including OSS), (iv) (loops), (v) (transport), (vi) (switching), (vii) (911, directory assistance and operator services), (x) (databases and signaling), (xi) (interim number portability), and (xiv) (resale). Moreover, BellSouth's entry into the in-region interLATA market is plainly contrary to the public interest as long as BellSouth refuses to commit today to measures needed to prevent backsliding once it gains interLATA authority: a full range of performance reporting in sufficient detail to verify parity; binding performance standards; and self-executing remedies sufficient to deter BellSouth from violating the standards.

[36] For example, suppose BellSouth reported that it provides between 4-15 business lines to CLECs, and to itself, in 4 days or less, 95% of the time. That would not necessarily mean that parity has been provided. It could well be that BellSouth provides lines to itself in 1 day or less 95% of the time, and to CLECs in 4 days or less 95% of the time; but by reporting only on the percentage of orders filled in 4 days or less, without detailing the actual number of days, the report could mask discrimination.

D. BellSouth's Application is Facially Deficient Because the LPSC's Permanent Rates Are Neither Cost-based Nor Forward-looking, and Will Have the Overall Effect of Impeding Local Competition in Louisiana.

BellSouth's application is also facially deficient because the LPSC's permanent prices for network elements are not cost-based and use standards and assumptions that are inconsistent with forward-looking cost methodology. The LPSC's prices, rather than fostering competition, place potential competitors at a significant disadvantage and are a significant barrier to local entry in Louisiana.

The LPSC, in its order of October 24, 1997 setting prices, voted to reject the final recommendation of the ALJ who had heard the evidence. With little discussion of its rationale, the LPSC adopted the rates presented by a staff consultant as permanent, cost-based rates. See LPSC Order No. U-22022/22093-A (Oct. 22, 1997 Open Session) ("10/24/97 Order"), at 4-5 (BST App. C-3, Tab 285). The ALJ's Final Recommendation, dated October 17, 1997, was based on her review of cost studies submitted by BellSouth, MCI and AT&T, and the testimony of 34 witnesses during eight days of hearings. The staff consultant, who was retained by the LPSC, was given only one week to review the materials and recommend rates. The consultant testified only during the final day of hearing. See ALJ Final Recommendation, Docket No. U-22022 (October 17, 1997) ("ALJ Final Rec."), at 4 (BST App. C-3, Tab 284).

The staff consultant admitted that, because of time constraints, she was unable to evaluate many significant assumptions contained in the BellSouth cost models or to even review the MCI/AT&T collocation cost model.[37] For example, despite acknowledging that non-recurring costs, vertical

[37] Hearing Transcript, LPSC Docket No. U-22022 ("Hearing Transcript") (examination of staff consultant Kimberly Dismukes), at 3109 (BST App. C-3, Tabs 265-273). See also id. at 2925 ("I did not and could not go into each study that BellSouth did and validate or not validate each assumption that they used.").

features, and OSS, among other things, are important issues to CLECs and "can serve as a barrier to entry," the staff consultant admitted that she did a limited review of these areas because of time constraints:

"Q: [I]f you will turn to Page 42 of your testimony, you have indicated with respect to non-recurring costs it was not possible for you to evaluate all the assumptions in BellSouth's proposals, is that correct?

A: That is correct.

Q: If you had had more time, you would have done additional work in that area, is that a fair statement?

A: That is a fair statement, yes.

Q: I think you have also indicated that with respect to the vertical features issue, that you did a limited review because of time restraints, is that correct?

A: That is correct.

* * *

Q: I want to talk about OSS a little bit. I believe you testified earlier that essentially you had accepted BellSouth's numbers with respect to OSS?

A. Generally speaking, yes, that is correct.

Q: Is that an area where it was more of a time constraint issue?

A: Definitely yes."

Hearing Transcript 3110-11, 3120. The staff consultant even admitted that she "didn't have time to load [the MCI/AT&T] collocation model on . . . [her] computer." Id. at 3119.

In instances where the staff consultant was pressed for time, she accepted BellSouth's assumptions without review and used BellSouth's "numbers" as defaults in her calculation of rates for interconnection and unbundled elements. See Transcript of the October 22, 1997 Open Session of the LPSC ("10/22/97 Transcript"), at 87 (BST App. D, Tab 2). The ALJ was properly concerned about this approach and, in key instances, disagreed with the staff consultant's recommendations. For example, the ALJ determined, contrary to the consultant, that: (i) geographic deaveraging is required; (ii) the physical collocation cost model and assumptions submitted by MCI and AT&T were appropriate; (iii) the shared and common cost adjustments made by the consultant should be rejected because of lack of supporting evidence; and (iv) further proceedings and new studies were necessary to allow adequate review of BellSouth's assertions with respect to vertical features and depreciation, respectively. See ALJ Final Rec. 24-55.

Nonetheless, the LPSC, with little explanation, rejected the ALJ's conclusions and, for purposes of permitting BellSouth to proceed immediately with its section 271 application, which the LPSC understood required final rates,[38] adopted the staff consultant's rates as "permanent cost-based rates." 10/24/97 Order 4-5. Indeed, the LPSC adopted the staff consultant's $8.28 recurring charge for vertical features even though she admitted to the LPSC, prior to its vote adopting her proposed rates, that if a new cost docket were opened, her recommendation for vertical feature rates would change. 10/22/97 Transcript 93.

1. The LPSC's permanent rates are not geographically deaveraged and, therefore, do not satisfy the requirements of sections 271(c)(2)(B)(i) and (ii).

One glaring deficiency of the LPSC's permanent rates is that they are not geographically deaveraged. See Hearing Transcript 3091 (testimony of staff consultant stating that she has not done a geographic deaveraging analysis). Such rates wholly fail to meet 271(c)(2)(B)(i) and (ii) of the Act as this Commission has interpreted it. See 47 C.F.R. § 51.507(f); Mich. Order ¶ 292. As this Commission has found:

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[38] As the LPSC commissioner who moved to reject the ALJ's report and adopt the consultant's rates stated, "I want to close this docket and [sic] so Bell can proceed to the FCC." 10/22/97 Transcript 92.

> Deaveraged rates more closely reflect the actual costs of providing interconnection and unbundled elements . . . [and] should, therefore, lead to increased competition and ensure that competitors make efficient entry decisions about whether they will use unbundled network elements or build facilities.

Id. See also Local Competition Order ¶ 764.

BellSouth's attempt to persuade this Commission that the LPSC's rates are cost-based, Varner Aff. ¶ 28, is belied by BellSouth's own expert's recognition of the LPSC's failure to order geographic deaveraging in Louisiana. Varner Aff. ¶ 31.[39] Because they are not geographically deaveraged, the LPSC's permanent rates are not cost-based and significantly overstate the costs of interconnection and unbundled network elements in the more densely populated areas of Louisiana. Decl. of Don Wood ¶ 25 (ex. H hereto). For example, in the most densely populated areas of the state, the LPSC's statewide averaged monthly rate for a loop is $19.35 while a geographically deaveraged monthly rate for this zone should be $10.12. Wood Decl. ¶ 26. Such inflated rates will continue to deter local competition in Louisiana and will help sustain BellSouth's current monopoly over local exchange services.

2. The LPSC's permanent rates are inflated and are not based on forward-looking, efficient technology and network architecture.

Another significant reason that the LPSC's permanent rates are inflated is because they reflect the assumptions in BellSouth's cost studies of outdated technology that is not efficient or forward-looking, and thus that is more costly than currently available systems and processes. For example, for purposes of determining the recurring and non-recurring costs of its local loops, BellSouth assumed a

[39] "BellSouth does not offer deaveraged rates for unbundled network elements. The Act does not require that rates for unbundled elements be deaveraged . . . [g]eographical deaveraging has not been ordered by the LPSC; therefore, geographic deaveraging is not required of BellSouth in Louisiana." Varner Aff. ¶ 31.

historic "Universal" digital loop carrier[40] (UDLC) configuration (available since the 1970s) for its local loops, rather than a less costly, more efficient and forward-looking "Integrated" digital loop carrier (IDLC) configuration for its local loops.[41] Hearing Transcript 2396-97. But BellSouth's own witness testified that IDLC is the current technology that BellSouth will be deploying in Louisiana for its own customers and for resale, if it has not already done so. Hearing Transcript 565-66. Yet for purposes of its cost studies, BellSouth pretends that IDLC technology does not exist and relies on historic, more costly technology. Wood Decl. ¶ 33.

According to BellSouth, IDLC technology, despite being forward-looking and the technology of choice in Louisiana, is not used in its cost studies in light of the Eighth Circuit's decision that new entrants are not permitted to purchase pre-existing combinations of the incumbent LEC's network elements. BellSouth contends that it can only unbundle loops that include a digital to analog conversion, as provided by UDLC, and cannot unbundled loops that are "integrated" with the switch. See Varner Aff. ¶ 89; Wood Decl. ¶ 33.

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[40] A digital loop carrier system is a digital alternative to using copper cables in the feeder portion of the local loop. It has two distinct advantages over copper cables: (1) it is cheaper than copper cables beyond a certain length; and (2) the transmission requirements of digital services, such as ISDN, for long loops can only be met by a digital loop carrier system. Wood Decl. ¶ 28 n.5.

[41] In a UDLC configuration, a digital signal from a remote location is converted to a lower quality analog signal by equipment located in the incumbent LEC's central office. The individual voice grade analog circuits are then wired and terminated on the Main Distribution Frame ("MDF") just like analog circuits for a copper feeder cable. With the advent of digital switches, it is unnecessary to convert the digital signal to analog at the central office. In the IDLC configuration, the digital loop carrier ("DLC") interfaces with the switch on a digital signal basis which provides for a much more efficient network architecture and improved transmission quality. Local loops provisioned using an IDLC system are much less costly than UDLC-provisioned loops because they do not require use of analog conversion equipment or an MDF. IDLC configurations also eliminate the costs of manually running cross connections to the MDF every time a customer changes providers. Rather, service provisioning (connects, disconnects and changes to services) can be made remotely on an electronic basis. Wood Decl. ¶¶ 29-31.

The staff consultant agreed with BellSouth's position and reading of the Eighth Circuit decision, rejecting use of the MCI/AT&T cost models because of their assumption of IDLC technology. The consultant instead adopted the BellSouth assumption of the older, less efficient technology. Testimony of Kimberly Dismukes (BST App. C-3, Tab 273), at 57-58.

But BellSouth's explanation is unsupportable for two reasons. First, it is technically feasible to unbundle loops that are integrated with the switch on a digital basis through an IDLC configuration. MCI and BellSouth engineers are currently exploring options to implement this, as BellSouth well knows. Wood Decl. ¶ 34. Second, the Iowa Utilities Bd. decision did not purport to determine the appropriate technology for basing prices for unbundled network elements and interconnection. This Commission's determination that section 252(d) requires that prices be forward-looking requires that they be based on the most advanced technology available. In this case, the choice of technology is not even debatable; BellSouth is already using, or is planning to use in the near future, IDLC in its own network.

Moreover, forcing CLECs to unnecessarily use historic and inefficient UDLC technology is discriminatory and a significant barrier to competition in Louisiana. It is plainly discriminatory to require a CLEC to provide service with transmission quality far inferior to that offered by BellSouth through its IDLC system. Indeed, UDLC technology is inadequate to properly serve customers who rely on their phone lines for on-line services such as the Internet. IDLC technology provides the transmission required for such services. Wood Decl. ¶ 31. Nothing in the Eighth Circuit's decision purports to allow a BOC to use inferior technology on a discriminatory basis to fulfill its obligation under section 251(c)(3).

In sum, the LPSC's rates are greatly overstated because they are based on BellSouth's erroneous cost assumptions which do not reflect costs in a forward-looking environment. IDLC is the applicable forward-looking technology, regardless of what BellSouth uses. The rates are significantly increased as a result of BellSouth's improper assumptions. For example, for installation of a two-wire analog voice grade loop, the LPSC set a non-recurring charge of $42.71. The appropriate non-recurring charge for the same service based on forward-looking assumptions is $1.91 when an existing BOC customer migrates to a CLEC or $1.71 for installation of any new (or additional) service for a CLEC customer. Wood Decl. ¶ 36.

3. The LPSC's permanent rates charge the full cost of interim number portability to new entrants and are, therefore, inconsistent with section 251(e)(2).

Section 251(e)(2) of the Act requires that the "cost of establishing telecommunications . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." This Commission has stated that interim number portability mechanisms (until the implementation of long-term number portability) must be consistent with section 251(e)(2). See First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Telephone Number Portability, 11 FCC Rcd. 8352 (July 2, 1996), at ¶ 126.

This Commission has determined that a number portability cost recovery mechanism that is borne by all telecommunications carriers on a competitively neutral basis must satisfy two criteria. First, it should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber. Id. ¶ 132. Second, it should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments. Id. ¶ 135. "A cost-recovery mechanism that imposes the entire incremental cost of currently available number portability on a facilities-based new entrant would violate" the competitively neutral principle. Id. ¶ 134 (emphasis added).

In adopting the consultant's recommended interim number portability rates, which are based on the BellSouth cost model and its particular assumptions related to interim number portability, see Hearing Transcript 2943-45, the LPSC charges new entrants the entire cost of interim number portability. Wood Decl. ¶ 38. This approach clearly violates section 251(e)(2) of the Act and the interim number portability criteria set forth by this Commission.[42]

4. The LPSC's endorsement of BellSouth's offering of contract service arrangements for resale on the same terms and conditions, including rates, that BellSouth offers to end user customers violates sections 251(c)(4)(A) and 251(c)(4)(B).

BellSouth refuses to make contract service arrangements ("CSAs") entered into after January 28, 1997 available as resale services. BST Br. 66. Therefore, BellSouth will not apply the wholesale discount to CSAs. This is wholly inconsistent with section 251(c)(4)(A) of the Act, which imposes an express duty upon incumbent LECs "to offer for resale at wholesale rates any telecommunication service that [it] provides at retail." No category of telecommunications services is exempt from the Act's resale pricing requirements. Moreover, BellSouth's policy also fails to comply with section 251(c)(4)(B), which imposes on incumbent LECs an obligation "not to impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service." BellSouth violates this duty by refusing to make CSAs available to new entrants at wholesale rates. When BellSouth provides CSAs to CLECs on a wholesale basis, it avoids marketing costs that it would incur when it provides them on a resale basis, and the Act requires, without any exceptions, the wholesale price to reflect an adjustment for these avoided costs.

This Commission has previously rejected BellSouth's plea for a rule "prohibiting resale of

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[42] The LPSC also adopted a non-recurring charge of $9.16 per OSS electronic order, which allows incumbent LECs to recover their incremental investment cost of putting interconnect systems in place for new entrants. Wood Decl. ¶ 38 n.6. This charge is not cost-based and is a substantial barrier to entry. In a forward-looking cost model, the costs of OSS equipment should be capitalized and recovered along with other joint and common costs through recurring rates.

contract service arrangements." See Comments of BellSouth filed in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, at 66 (May 16, 1996); Reply Comments [of BellSouth] at 44-45 (May 30, 1996) (same)). As this Commission stated,

> [The] language [in section 251(c)(4)] makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs. A contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act.

Local Competition Order ¶ 948. This Commission has recognized only a few exceptions, see 47 C.F.R. § 51.613, which do not include CSAs. Thus, as this Commission has interpreted the Act's requirements, BellSouth's restriction is inconsistent with the Act and fails to meet the checklist.

Indeed, the FCC's interpretation was confirmed by the Eighth Circuit in Iowa Utilities Board. That court expressly rejected the incumbent LECs' objections "to the FCC's determination that discounted and promotional offerings are 'telecommunication service[s]' that are subject to the resale requirement of subsection 251(c)(4)." Iowa Utilities Bd., 120 F.3d 753 at 818-19. The court held that section 251(c)(4)(B) authorizes the Commission "to issue regulations regarding the incumbent LECs' duty not to prohibit, or impose unreasonable limitations on, the resale of telecommunications services." Id. at 819.

5. The LPSC's collocation rates are prohibitively and unnecessarily expensive and will deter entry into local exchange markets.

BellSouth and MCI/AT&T presented two highly different physical collocation models before the LPSC. The consultant acknowledged that she did not have time to review the MCI/AT&T collocation model at all and therefore based her physical collocation rates on the BellSouth model. Hearing Transcript 3119. The LPSC adopted the consultant's physical collocation rates, despite the

ALJ's determination that the MCI/AT&T collocation model best reflects TELRIC costs. See ALJ Final Rec. 55.

As a result, the LPSC's physical collocation charges are not efficient or forward-looking and deter local interconnection. For example, the LPSC's physical collocation rates reflect BellSouth's decision to use metal stud and drywall for collocation space construction. That type of construction is entirely unnecessary and considerably more expensive and time consuming than constructing a metal cage, as proposed by new entrants. Wood Decl. ¶ 47. Also, the LPSC adopted a recurring monthly rate of $136.63 per square foot for the first 100 square feet of space construction and a recurring monthly rate of $15.85 per foot for each additional 50 square feet of space construction. In setting such a disproportionately high rate for the first 100 square feet of construction, the LPSC will effectively preclude smaller CLECs, who will only require 100 square feet of collocation space, from interconnecting. Wood Decl. ¶ 49.

Further, the LPSC adopted BellSouth's proposal that the non-recurring rate for space preparation is to be determined by BellSouth on an "ICB" or individual case basis. The space preparation fee is assessed against collocators before any construction has begun on the collocation space and can include expenses of the incumbent LEC such as demolition, moving equipment and staff, asbestos removal, ADA and OSHA compliance, and any other expenses unilaterally deemed necessary by the incumbent LEC to make the collocation space ready for occupancy. Wood Decl. ¶ 44. Thus, the LPSC has left the determination of the nature and amount of this fee completely to the discretion of the incumbent LEC, without any overview by the LPSC that the fee is cost-based or forward-looking. As a result, BellSouth is at liberty to set this fee unreasonably high in order to impede local competition in Louisiana and maintain its monopoly over local exchange services. BellSouth has quoted MCI space preparation fee estimates as high as $80,800 to $148,000, and has refused even to commit to keep its final charges within those ranges. See Wood Decl., ex. A (examples of BellSouth space preparation cost estimates given to MCI).

6. The LPSC's permanent prices include other rates that are not cost-based and exclude charges that are significant for local entry.

The LPSC's recurring charge of $8.28 for all vertical features is inappropriate because vertical features are a function of the switch and the cost of vertical features cannot be separated from the overall cost of the switch. Wood Decl. ¶ 54. This presents a significant barrier to entry for services that are extremely lucrative for BOCs. Because there is no incremental cost to the BOC for use of vertical features when it is also recovering the forward-looking cost of the switch, the $8.28 charge for vertical features is nothing more than a windfall for BellSouth. Wood Decl. ¶ 54.

The LPSC's rates also do not include some key rates which are significant for local entry. For example, the LPSC has not included rates for "glue" charges -- BellSouth's charge for recombining unbundled network elements it chooses to take apart. This is particularly problematic since no work is involved in recombining unbundled elements, and these charges should be zero. Because the LPSC did not address this issue, BellSouth is at liberty to set these glue charges at whatever rate it determines, and thereby impose a significant barrier to entry. Wood Decl. ¶ 52. Further, this is a critical omission given (1) BellSouth's refusal to provide elements in combination; (2) BellSouth's failure to specify how it would provide reasonable, nondiscriminatory and cost-based access to its network so CLECs can combine elements; and (3) the Eighth Circuit's recent ruling vacating section 51.315(b) of the Commission's regulations.

The LPSC also does not include any rates for GR-303 Integrated Port and Digital Cross Connect Capability, which are critical components of IDLC technology and are therefore important to CLECs' local entry strategies. Wood Decl. ¶¶ 50-51.

7. BellSouth's contention that this Commission has no authority to review the LPSC's pricing determinations is inconsistent with this Commission's authority under section 271 of the Act.

BellSouth's contention that this Commission must accept the LPSC's pricing determinations as "determinative" of whether BellSouth meets the pricing requirements of the checklist for entry into the in-region interLATA market, BST Br. 41-42, 45, is plainly wrong as a matter of law. Congress expressly delegated this decision to this Commission, and the Eighth Circuit did not determine otherwise in Iowa Util. Bd.[43] Thus, this Commission not only has the authority to review the adequacy of BellSouth's application, including the LPSC's permanent prices; this Commission is required to make an independent judgment of checklist compliance. And, although this Commission must consider any determination by the LPSC, it is not required to accord such determination any particular weight. See 47 U.S.C. § 271(d)(2)(B); cf. § 271(d)(2)(A); see also DOJ SC Eval. 44-45.

E. BellSouth is Not Providing Additional Items on the Competitive Checklist on Reasonable and Nondiscriminatory Terms.

In addition to substantial checklist deficiencies described above relating to OSS, unbundled elements, pricing, and performance standards, BellSouth fails to meet the checklist in the following ways:

Interconnection. BellSouth does not set forth in its agreements the necessary implementation details for virtual or physical collocation. Even BellSouth's Collocation Handbook omits critical details, leaving such terms as implementation intervals, for example, to be worked out between the CLEC and BellSouth in negotiations. See Milner Aff. ¶ 31. These omissions are all the more important given BellSouth's lack of experience providing physical collocation in particular. As of

[43] See Mich. Order ¶ 283 ("[t]he court . . . addressed the challenge to the Commission's pricing rules on jurisdictional grounds and . . . made no ruling concerning the proper meaning of the statutory requirement in section 252(d) that rates must be cost-based").